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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,655	07/02/2003	Marshall Thomas DePue	10030189-1	5451

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EXAMINER	
BODDIE, WILLIAM	

ART UNIT	PAPER NUMBER
2629	

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/612,655	DEPUE ET AL.	
	Examiner	Art Unit	
	William Boddie	2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *4/18/06*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

In an amendment dated, 4/18/06, the applicant presented arguments traversing the rejections of claims 1-20. Claims 1-20 are currently pending.

Response to Arguments

1. Applicant's arguments filed 4/18/06 have been fully considered but they are not persuasive.

Uncombinable argument

2. On pages 6 and 7 of the remarks, applicant argues that because a DMFC creates water as a byproduct of use, and the mouse of Derocher is at times stored within a laptop computer, this would in time render the computer useless. Therefore one of ordinary skill in the art would not be motivated to combine the two.

The examiner respectfully disagrees. Clearly Koripella has found a way to effectively power a sensitive electronic device by means of a DMFC without rendering the device useless. This is evidenced by his disclosure of such a fuel cell in a cell phone and other portable electronic devices (col. 6, lines 1-4). Therefore how to vent the exhaust water in such a way as to protect the sensitive electronics of the device, is obvious to those of ordinary skill.

Changes principle of operation argument

3. On page 8, applicant argues that supplying power to the wireless mouse by any means other than rechargeable battery would alter the principle of operation of Derocher's system.

The Examiner respectfully disagrees. As shown in Koripella the fuel cell is used to supplement the power of the rechargeable battery. Combining Koripella's fuel cell with the existing rechargeable battery system of Derocher would not change the principle idea of Derocher. Derocher's system would still be able to recharge the mouse rechargeable battery, and solve the problem stated by Derocher of requiring the user to carry several replacement batteries. In addition, with the fuel cell *supplementing* the rechargeable power of Derocher (similar to the situation disclosed by Koripella), the mouse would be able to operate for longer periods between charges.

Hindsight argument

4. Applicant again argues that the Examiner used impermissible hindsight in combining Koripella and Derocher. Specifically stating that the Examiner has not shown how he did not use improper hindsight. Examiner once again states that so long as the combination takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Derocher teaches a wireless, optical, rechargeable mouse. Koripella teaches a fuel cell that supplements a rechargeable battery for powering a portable electronic device. Derocher's battery requires frequent recharging. Thus there is obviously a need for a rechargeable mouse that operates longer in-between charges. A solution, clear to those of ordinary skill in the art, is the inclusion of a fuel cell as taught by

Koripella. With each of these simple facts available at the time of the invention, the Examiner fails to see how this could be perceived as improper hindsight.

Non-analogous art argument

5. On pages 10 and 11, the applicant again argues that Koripella and Derocher are non-analogous art. The Examiner disagrees.

As stated in the prior Office Action, Koripella and Derocher are both directed to a similar problem solving area, providing a rechargeable and long lasting power supply to a handheld wireless portable device. The applicant's claim that Koripella's power supply means for handheld wireless portable devices is not analogous to applicant's wireless optical navigation device is neither conceded by the Examiner or seen as pertinent to the current question, of whether Koripella and Derocher are reasonably pertinent to the problem of the current invention. The applicant's problem is, the short battery life of batteries used in wireless optical navigation devices (page 1; lines 7-16). It is this problem which is analogous to Derocher (overcoming the user having to carry batteries to replace failing batteries of a wireless optical navigation device, col. 2, 50-54) and Koripella (overcoming constant recharges of batteries by miniaturizing a fuel cell to supplement the power supplied by a rechargeable battery to a portable wireless electronic device). It seems clear to the Examiner that Koripella and Derocher are reasonably pertinent to the Applicant's problem of extending battery life in wireless optical navigation devices.

Length of time argument

6. Throughout the remarks, applicant argues that because both a micro fuel cell and a wireless optical navigation system were each known long ago, and since there is no single embodiment showing the combination of the two, the combination is not obvious. This line of logic if followed to its conclusion would not allow for any obviousness-type rejections at all to be made. Applicant is pointed to 35 U.S.C. 103 that provides the statutory basis for obviousness-type rejections. As it has been shown, in previous office actions, and clarified, above, that the prior art of Derocher and Koripella are analogous art, combinable, and contain a motivation to combine; it would clearly have been obvious to one of ordinary skill in the art to combine the two.

7. The rejection of claims 1-20 on the merits of prior art can be found in the previous Office Action, dated 1/12/06. As shown above these rejections are seen as proper and are therefore maintained.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Will Boddie whose telephone number is (571) 272-0666. The examiner can normally be reached on Monday through Friday, 7:30 - 4:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amr Awad can be reached on (571) 272-7764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Wlb
5/24/06

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